

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

This document relates to: The cases identified in
Schedule A hereto.

MASTER DOCKET

18-md-2865 (LAK)

**STIPULATION AND [PROPOSED] ORDER CLARIFYING ORDER LIMITING
WAIVER PURSUANT TO RULE 502(d) OF THE FEDERAL RULES OF EVIDENCE**

Plaintiff Skatteforvaltningen (“SKAT”) and the defendants identified in Schedule A hereto (collectively, the “Defendants”), by and through their undersigned attorneys, hereby stipulate and agree as follows:

WHEREAS, on January 27, 2021, the Court entered the Stipulation and Order Limiting Waiver Pursuant to Rule 502(d) of the Federal Rules of Evidence (the “FRE 502(d) Order,” No. 18-md-2865 (LAK), ECF No. 521) in which the Court ordered that Defendants’ Disclosure of Privileged Documents or Advice in support of their reliance on the advice of counsel Defense shall not constitute or be deemed a waiver or subject matter waiver by the Non-Parties of the Privileges, or any other privilege, right, or protection against production or disclosure of the Privileged Documents and Advice or their contents, in these actions or in any other proceeding;¹

WHEREAS, the parties wish to clarify that the Disclosure to be made in support of the Defense includes testimony about the Privileged Documents or Advice by counsel on whose advice Defendants assert they relied, including, but not limited to, defendant Michael Ben-Jacob

1. Capitalized terms not defined herein have the meanings ascribed to them in the FRE 502(d) Order.

and non-defendant Peter Wells, and that such testimony by counsel also shall be without prejudice to the rights of the Non-Parties;

WHEREAS, the Non-Parties do not oppose the relief sought herein;

NOW THEREFORE, the parties hereby stipulate and agree as follows:

1. The Disclosure, which under the FRE 502(d) Order shall not constitute or be deemed a waiver or subject matter waiver by the Non-Parties of the Privileges, or any other privilege, right, or protection against production or disclosure of the Privileged Documents and Advice or their contents, in these actions or in any other proceedings, includes testimony by Michael Ben-Jacob, Peter Wells, and any other counsel on whose advice Defendants contend they relied, about the Privileged Documents or Privileged Advice.

2. The other terms of the FRE 502(d) Order concerning the confidentiality and use of documents produced and transcripts of testimony offered as part of the Disclosure shall apply equally to the Disclosure as made by Michael Ben-Jacob, Peter Wells, or any other counsel on whose advice Defendants contend they relied.

Dated: New York, New York
May 19, 2021

By: /s/ Alan E. Schoenfeld
(e-signed with consent)
Alan E. Schoenfeld
WILMER CUTLER PICKERING HALE
AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Telephone: (212) 230-8800
alan.schoenfeld@wilmerhale.com

*Counsel for Defendants Richard
Markowitz, Jocelyn Markowitz, Avanix*

By: /s/ Marc A. Weinstein
Marc A. Weinstein
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004-1482
Telephone: (212) 837-6000
Fax: (212) 422-4726
marc.weinstein@hugheshubbard.com

*Counsel for Plaintiff Skatteforvaltningen
(Customs and Tax Administration of the
Kingdom of Denmark)*

*Management LLC Roth 401(K) Plan,
Batavia Capital Pension Plan, Calypso
Investments Pension Plan, Cavus Systems
LLC Roth 401(K) Plan, Hadron Industries
LLC Roth 401(K) Plan, RJM Capital
Pension Plan, RJM Capital Pension Plan
Trust, Routt Capital Pension Plan, and
Routt Capital Pension Plan Trust*

By: /s/ Sharon L. McCarthy
(e-signed with consent)
Sharon L. McCarthy
KOSTELANETZ & FINK, LLP
7 World Trade Center, 34th Floor
New York, NY 10007
Telephone: (202) 740-6999
smccarthy@kflaw.com

*Counsel for Defendants John van
Merkensteijn, Elizabeth van Merkensteijn,
Azalea Pension Plan, Bernina Pension
Plan, Bernina Pension Plan Trust,
Omineca Pension Plan, Omineca Trust,
Starfish Capital Management LLC Roth
401(K) Plan, Tarvos Pension Plan, Voojo
Productions LLC Roth 401(K) Plan,
Michelle Investments Pension Plan,
Remece Investments Pension Plan, and
Xiphias LLC Pension Plan*

SO ORDERED:

/s/ Lewis A. Kaplan /BT 5/20/2021

Hon. Lewis A. Kaplan
United States District Judge

SCHEDULE A

Case Number	Plan	Defendant(s) Asserting Reliance Defense
18-cv-04833	Raubritter LLC Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01867	Avanix Management LLC Roth 401(K) Plan	Richard Markowitz
19-cv-01895	Batavia Capital Pension Plan	Richard Markowitz
19-cv-01904	Calypso Investments Pension Plan	Jocelyn Markowitz
19-cv-01869	Cavus Systems LLC Roth 401(K) Plan	Richard Markowitz
19-cv-01868	Hadron Industries LLC Roth 401(K) Plan	Richard Markowitz
19-cv-01898	RJM Capital Pension Plan	Richard Markowitz
19-cv-01896	Routt Capital Pension Plan	Richard Markowitz
19-cv-01906	Michelle Investments Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01911	Remece Investments LLC Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01924	Xiphias LLC Pension Plan	Richard Markowitz; John van Merkensteijn
19-cv-01893	Azalea Pension Plan	Elizabeth van Merkensteijn

Case Number	Plan	Defendant(s) Asserting Reliance Defense
19-cv-01866	Basalt Ventures LLC Roth 401(K) Plan	John van Merkenstijn
19-cv-01865	Bernina Pension Plan	John van Merkenstijn
19-cv-01894	Omineca Pension Plan	John van Merkenstijn
19-cv-01871	Starfish Capital Management LLC Roth 401(K) Plan	John van Merkenstijn
19-cv-01930	Tarvos Pension Plan	John van Merkenstijn
19-cv-01873	Voojo Productions LLC Roth 401(K) Plan	John van Merkenstijn
19-cv-01785	Albedo Management LLC Roth 401(K) Plan	Richard Markowitz; Avanix Management LLC
19-cv-01781	Ballast Ventures LLC Roth 401(K) Plan	Richard Markowitz; Cavus Systems LLC
19-cv-01791	Fairlie Investments LLC Roth 401(K) Plan	Richard Markowitz; Hadron Industries LLC
19-cv-01783	Bareroot Capital Investments LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01794	Battu Holdings LLC Roth 401K Plan	John van Merkenstijn; Omineca Trust
19-cv-01798	Cantata Industries LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust

Case Number	Plan	Defendant(s) Asserting Reliance Defense
19-cv-01788	Dicot Technologies LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01918	Vanderlee Technologies Pension Plan	John van Merkenstijn; Omineca Trust
19-cv-01922	Cedar Hill Capital Investments LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01928	Fulcrum Productions LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01926	Green Scale Management LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01929	Keystone Technologies LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01931	Tumba Systems LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01800	Crucible Ventures LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01803	Limelight Global Productions LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01809	Plumrose Industries LLC Roth 401K Plan	John van Merkenstijn; Omineca Trust

Case Number	Plan	Defendant(s) Asserting Reliance Defense
19-cv-01812	Roadcraft Technologies LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01818	True Wind Investments LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01870	Eclouge Industry LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01792	First Ascent Worldwide LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01806	Loggerhead Services LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01808	PAB Facilities Global LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01815	Trailing Edge Productions LLC Roth 401(K) Plan	Richard Markowitz; Routt Capital Trust
19-cv-01801	Monomer Industries LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01810	Pinax Holdings LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-01813	Sternway Logistics LLC Roth 401(K) Plan	John van Merkenstijn; Omineca Trust
19-cv-10713	2321Capital Pension Plan; Bowline Management Pension	Richard Markowitz; John van Merkenstijn; Bernina

Case Number	Plan	Defendant(s) Asserting Reliance Defense
	Plan; California Catalog Company Pension Plan; Clove Pension Plan; DFL Investments Pension Plan; Davin Investments Pension Plan; Delvian LLC Pension Plan; Laegeler Asset Management Pension Plan; Lion Advisory Inc. Pension Plan; Mill River Capital Management Pension Plan; Next Level Pension Plan; Rajan Investments LLC Pension Plan; Spirit on the Water Pension Plan; Traden Investments Pension Plan	Pension Plan Trust; RJM Capital Pension Plan Trust